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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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1 counsel of record, hereby jointly move this Court for a special scheduling review
2 of the parties' proposed discovery plan in this matter.

3 **I. Rule 26(f) Conference.**

4 Pursuant to FRCP 26(f), a meeting was held on November 22, 2016 between
5 counsel for the parties. Counsel discussed the claims and legal issues at the
6 meeting and agreed that the standard discovery plan is not best-suited for this
7 lawsuit for the reasons set forth below.

8 **II. Nature of Case and Purpose of Special Review.**

9 This dispute involves Plaintiff TOLBERT'S claim for long-term disability
10 benefits under a group insurance plan administered by Defendant COX
11 ENTERPRISES, INC. ("Cox Enterprises" or "Plan Administrator") for the benefit
12 of its employees. COX ENTERPRISES delegated the administration of claims
13 under the plan to Defendant AETNA LIFE INSURANCE COMPANY ("AETNA"
14 or "Claims Administrator"). Plaintiff's complaint alleges a claim under the
15 Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, et seq.
16 ("ERISA"). Discovery may be limited to the administrative record for Plaintiff's
17 administrative claim and appeal. The administrative record includes, *inter alia*,
18 Plaintiff's medical records, Plaintiff's arguments for the payment of benefits, the
19 Plan Administrator's and Claim Administrator's decisions, Defendant's claim
20 investigation and reports of medical reviewers, and the long-term disability plan
21 documents.

22 Plaintiff brought suit alleging that Aetna improperly denied his claim for
23 disability benefits. ERISA regulates employee benefit plans such as the Plan under
24 which Plaintiff is seeking benefits. Defendants contend that the issue in this case is
25 whether Aetna's decision to terminate LTD benefits constitutes an abuse of
26 discretion.

27 **III. Proposed Plan.**

28 The parties have conferred and agreed as follows:

1 A. Production and Review of the Administrative Record: Defendants are
2 in possession of the administrative record in this matter. Defendants will produce
3 a proposed bates-stamped administrative record for Plaintiff's review by **January**
4 **9, 2017.** Plaintiff agrees to waive the initial disclosure requirements of Federal
5 Rules of Civil Procedure 26(a)(1), *et seq.* On or before **January 23, 2017**,
6 Plaintiff will notify Defendants of his position as to the following: (1) whether
7 Plaintiff believes that the record is complete or any additional documents should be
8 added to the administrative record; (2) whether Plaintiff believes that any
9 documents contained in the proposed administrative record should be omitted, and
10 (3) whether Plaintiff believes that any discovery beyond the administrative record
11 should be conducted.

12 B. Filing of Administrative Record/Motion for Discovery: On or before
13 **March 16, 2017**, the Defendants will file a joint administrative record with this
14 Court, the contents of which will be agreed upon by Plaintiff. In the event the
15 parties cannot reach an agreement on the joint administrative record, Plaintiff will
16 file any motion(s) that Plaintiff believes is appropriate, including but not limited to
17 moving to conduct discovery beyond the administrative record and/or moving to
18 supplement or omit from the administrative record, by **May 18, 2017** (pending
19 determination on any motions, the parties will file on **May 18, 2017**, those portions
20 of the administrative record on which they do agree).

21 C. Briefing Schedule for Legal Issues/Merits of the Case: The primary
22 legal issues in this matter are the following: (1) the standard of review to be
23 applied to Defendants' decision to deny Plaintiff's claim for long-term disability
24 benefits; and (2) whether, applying that standard of review, Plaintiff has met his
25 burden of proving the decision should be overturned.

26 If a joint administrative record is timely filed and Plaintiff does not seek to
27 conduct discovery beyond the administrative record, or to supplement or omit from
28 the administrative record, the parties propose that FRCP Rule 52 motions be filed

1 no later than **June 8, 2017**. Thereafter, the parties will file opposing memoranda by
2 **June 22, 2017**, and reply memoranda by **July 6, 2017**.

3 If Plaintiff does seek and is permitted discovery beyond the administrative
4 record, the above deadlines will be suspended. The parties will work together and
5 with the Court to prepare a new scheduling order, and may seek a status conference
6 to address any outstanding discovery or other issues.

7 WHEREFORE, the parties jointly request that this Court adopt the proposed
8 discovery and case schedule set forth herein.

9 Dated: December 19, 2016

GORDON & REES LLP

11 By: /s/ Phil W. Su
12 Robert S. Larsen
13 Phil W. Su
14 300 S. Fourth Street, Suite 1550
15 Las Vegas, NV 89101
16 *Attorneys for Defendants*
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18 *AETNA LIFE INSURANCE*
19 *COMPANY*

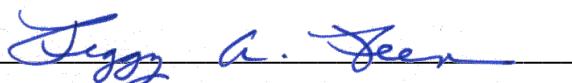
20 Dated: December 19, 2016

LAW OFFICE OF JULIE A. MERSCH

21 By: /s/ Julie A. Mersch
22 Julie A. Mersch
23 701 S. 7th Street
24 Las Vegas, NV 89101
25 *Attorney for Plaintiff*
26 *TODD TOLBERT*

27 IT IS SO ORDERED:

28 DATED: December 28, 2016


27
28

UNITED STATES MAGISTRATE JUDGE